IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2007

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THE HONOURABLE MR. JUSTICE P. JYOTHIMANI

W.P.No.1523 of 2007 &
M.P.No.1 of 2007

K.Balswami . . Petitioner

Vs

1.Director of Pension,
Anna Salai,
III Block, II Floor,
Chennai-600 006.
2.The Treasury Officer,
District Treasury,
Madurai. .. Respondents

Petitions filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the first respondent in his proceedings K.Dis.No.46223/04/E5 dated Nil and quash the same and direct the respondents to reimburse the medical expenditure borne by the petitioner.

For Petitioner : Mr.Pon Senthilkumaran

For Respondent : Mr.D.Srinivasan GA

O R D E R

The writ petition is filed challenging the order of the first respondent in any by which the claim of medical reimbursement made by the petitioner was returned stating that the "The Surgery/Treatment undergone is not found in the list of specialised surgery/treatment of the references cited."

2.It is the case of the petitioner that he was diagnosed on having Type 2 Diabetes mellitus and II degree moblitz Type 2 AV Block and he was advised to take Permanent Pacemaker Implantation. The petitioner underwent the said Implantation on 18.09.2004 in the Meenakshi Mission Hospital and Research Centre, Madurai and in that regard the petitioner incurred an expenditure of Rs.96,630.15/-.

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3.As per G.O.Ms.No.562 Finance (Pension) Department dated 11.07.95 the petitioner will be entitled for reimbursement to get a sum of Rs.50,000/- or 75% of the actual cost of treatment whichever is less under the Tamil Nadu Government Pensioners Health Fund Scheme. In view of the same, the petitioner has made a claim on 11.10.2004 to the second respondent seeking reimbursement, who in turn has forwarded the same to the first respondent in his proceedings KDIS 20915/04/J2 dated 15.10.2004. While so, the first respondent has issued the impugned order stating that the surgery undergone by him is not in the list specialised as per G.O.Ms.No.562 Finance (Pension) Department dated 11.07.1995. Even though, the petitioner has undergone Permanent Pacemaker Implantation which is a kind of treatment only for the purpose of heart ailment, the respondents cannot be heard to say that the petitioner should necessarily undergo the Open Heart Surgery. However, it is the case of the petitioner that by subsequent G.O.Ms.No.378 dated 13.10.2005 clarification was issued by the Government by including Permanent Pacemaker within the Open Heart Surgery. In respect of the same, the impugned order is passed obviously for the reason that the said clarification was issued on 13.10.2005 while the treatment undergone before that date. It is in these circumstances, the present writ petition is filed.

4.I have heard the learned counsel for the petitioner and the learned Government Advocate who takes notice on behalf of the respondents.

5.Issue relating to this case has already been decided in more than one case. In one case reported in 1996 2 SCC 336 (SURJIT SINGH v. STATE OF PUNJAB) the Honourable Apex Court had an occasion to decide when treatment was conducted in a hospital in a particular manner, the stand taken by the department that the nature of treatment is not approved as per the Government Order. The Honourable Apex Court has held that it is not for the Department to suggest as to what should be the nature of treatment and it is for the concerned individual in consultation with the medical practitioners to decide upon the nature which depends on the body stature. That was the decision rendered by the Apex Court in the said Judgment.

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In a decision reported in 2006 2 M.L.J. 747 (C.NAGAMUTHU v. STATE OF TAMIL NADU) this Court has held enlisting of hospitals cannot be the policy of the Government while framing such beneficial schemes.

In another decision reported in 2006 4 CTC 832 (E.RAMALINGAM v. THE DIRECTOR OF COLLEGIAE EDUCATION) this court had an occasion to deal with the nature of treatment.

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6.While the object of the scheme is to give financial support to the deserving persons, who contributed towards the Health Fund Scheme, naturally it is not open to the authorities to suggest the manner of treatment or to suggest that the treatment should be undergone in a particular hospital alone which can never be the policy of the Government.

7.Following hierarchy of judgments, there is absolutely no difficulty to come to a conclusion that the impugned order of the first respondent is unsustainable and hence the impugned order is set aside. The writ petition stands allowed with a direction to the first respondent to grant the medical reimbursement claimed by the petitioner subject to the maximum limit to which he is entitled if there are no other legal impediment and such amount shall be paid within a period of 8 weeks from the date of receipt of a copy of this order. Consequently, connected M.P. is closed.

jikr

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Director of Pension,
Anna Salai,
III Block, II Floor,
Chennai-600 006.

2.The Treasury Officer,
District Treasury,
Madurai.

+ 1 cc to Mr. S. Pon Senthil Kumaran, advocate SR No. 2620

+ 1 cc to the Government Pleader, High Court, Madras SR No.2878

MA(CO)
SR/23.1.2007

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